

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 1:00cv637
)	
DANIEL GREEN, L.W.G. CO.,)	
INC. f/k/a GREEN INDUSTRIES)	
INC., THE ESTATE OF MAURICE GREEN)	Judge Susan J. Dlott
DANIEL GREEN IN HIS CAPACITY AS)	
THE PERSONAL REPRESENTATIVE OF THE)	
ESTATE OF MAURICE GREEN, and)	
HARD SURFACE TECHNOLOGY, INC.)	
)	
Defendants)	
)	
and)	
)	
SAUNDRA GREEN, wife of)	
DEFENDANT DANIEL GREEN,)	
)	
Rule 19 Defendant.)	

* * * * *

**DEFENDANTS' SURREPLY TO
UNITED STATES' REPLY IN SUPPORT OF MOTION FOR
LEAVE TO FILE THIRD AMENDED COMPLAINT**

* * * * *

The United States' Reply argument goes wholly outside the applicable standard for the amendment of pleadings that is currently before the Court. Under the guise of responding to Defendants' statute of limitations argument, the United States has used its Reply to improperly argue the "merits" of its fraudulent transfer allegations and, moreover, relied on evidence not proper for the Court's review in doing so. Such tactic warrants this brief reply.

Whether Maurice Green/LWG's 1994 sale of property to Omni Properties was, in fact, fraudulent and when the Government "should have known" said transfer was "fraudulent" is completely irrelevant to the statute of limitations issue or any other issue implicated by the Government's motion to amend. The FDCPA expressly provides that its statute of limitations begins to run "within 6 years after the transfer was made" or "within 2 years after the transfer or obligation was or could reasonable have been discovered by the claimant." Defendants' Memorandum in Opposition at p. 10, citing 28 U.S.C. §3306(b) (Emphasis added). The Government's prejudicial and wholly irrelevant discourse on the merits of its fraudulent transfer allegations should not be considered by the Court.

Moreover, the Government's argument borders on the ridiculous. Throughout this case, the Government has attacked and scrutinized every transaction, entity and person in any way affiliated with Maurice Green. But now the Court is to accept that the Government, since 1996, believed the LWG/Omni Properties transaction to be entirely above board and had absolutely no reason to believe otherwise until Daniel Green's February 2002 deposition. Such a claim is preposterous.

What is more, the Government, in advancing this argument, relies extensively on evidence not properly before the Court. The proffer statement that the United States quotes at length from and attaches in redacted form to its Reply has been expressly held by the Court to be improper for the Government to use during its case in chief. Order of Reference entered May 28, 2001, Docket Entry No. 24. Indeed, none of documents from the referenced criminal investigation are before this Court

and the cited proffer statement has been cited in a manner which gives Defendants absolutely no opportunity to rebut the Government claims.¹

The Government's argument on the merits of its fraudulent transfer claims (which it has not even been granted leave to amend to its Complaint) and citations to the 1996 proffer statement should be disregarded by the Court.

Respectfully submitted,

/s/Philip J. Schworer

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¹ The 1996 proffer statement was cited by Defendants only to show notice to the Government, not for the truth of its contents.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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on this 25th day of March, 2004.

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